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14/01/08

HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench

Writ Petition No. 4472 of 2004

Coram : **Hon'ble Shri Jagdish Bhalla, Acting CJ &**
Hon'ble Shri Satish K. Agnihotri, J

PETITIONER Rajesh Agarwal, Aged about 45 years, S/o. Shri Ganpatrai Agarwal, R/o. Sheorinarain, District Janjgir-Champa (CG)

Versus

RESPONDENTS

1. Union of India, Through the Secretary, Ministry of Petroleum and Natural Gas, New Delhi

2. Indian Oil Corporation Ltd., A Company incorporated under the Companies Act, 1956 with registered office at G-9, Ali Yavar Jung Marg, Mumbai -51

3. Indian Oil Corporation Ltd., A Company incorporated under the Companies Act, 1956 with Divisional Office at VIP Road, Telibandha, Raipur (CG)

(Writ Petition under Article226/227 of the Constitution of India)

Present :

Shri Kishore Bhaduri, Advocate with Shri Jitendra Pali, counsel for the petitioner.

None for the respondent No.1.

Shri P.Diwakar, Senior Advocate with Shri Adiraj Surana, Advocates for the respondents No. 2 and 3.

Shri P.S.Koshy, counsel for the respondent No.4.

Shri J.K.Jha, Assistant Manager (Retail Sales) Bilaspur is present in person.

ORAL ORDER

(Passed on 4th December, 2007)

The following oral order of the Court was passed by **Hon'ble Shri Jagdish Bhalla, Acting C.J.**

A doubt comes in the mind of the Court whether the petitioner was serious to pursue the writ petition, the reason being that inspite of the fact that the application filed by Smt. Chameli Khatkar for impleadment was allowed, yet the impleadment of respondent No.4 has not been carried out.

This writ petition is directed against the refusal to continue the contract agreement with regard to dealership of petrol pump.

The petitioner was appointed as a short term Company Operated and Company Owned (for short COCO) dealer which is in the nature of temporary dealer. As such, learned counsel for the petitioner submitted that the petitioner has a right to continue with the said dealership till the regular dealer is appointed. According to the petitioner, no regular dealer has been appointed and in this connection our attention has been drawn to the effect that anyone, who has been given dealership after 27.12.2005 cannot be granted any permanent dealership in place of the petitioner. In this connection, it has been emphatically submitted that the selection of respondent No.4 is of the later date, therefore, it is liable to be quashed and the petitioner has right to continue till selection of regular dealer. Further, it has been indicated that on the strength of the interim orders granted, the petitioner continued to function, however, the authorities of the Indian Oil Corporation, are not releasing certain payments of the petitioner, which they ought to have done after regular inspection. It has also been indicated that regular inspections were made after passing of the interim orders by this Court. According to the petitioner, the grant of dealership to the respondent No.4 is in violation of circular of Indian Oil Corporation dated 12.12.2006 (Additional Document 2).

On the other hand, learned counsel appearing for the respondents No. 2 and 3/Indian Oil Corporation Limited, submits that under special catergory, dealership has been provided to those who fought in Kargil War i.e. Operation Vijay or their widows or their dependants, besides this, the persons belonging to Scheduled Castes and Scheduled Tribes. The respondent No.4 belongs to Scheduled Caste. It has also been informed to us that the dealership of the petrol pumps was given to the Scheduled Caste candidates. The site for the outlet for Scheduled Caste candidates ought to be provided by the authorities and accordingly first the authorities are required to select a site and the same be made available to the Scheduled Caste dealer and in the process whatever money invested by the Corporation can be recovered in installments from the incumbent. The grant of dealership to the respondent No.4 is in accordance with the said policy of Indian Oil Corporation and in fact, initially the site selected was a different one, however, due to certain unavoidable circumstances it was changed with the consent of respondent No.4 to the present place.

Our attention is drawn to the letter dated 28th September 2004 (Additional Document 4, Annexure-A). From perusal of the same, it is indicated that respondent No.4 was given letter of intent on 28th September 2004, and it has been further clarified in the document dated 15th June 2007 that the letter of intent was granted on 28th September 2004, prior to the cut off date as alleged by the petitioner. No doubt, there were certain circumstances wherein initially the respondent No.4 could not be given dealership which was allotted to him once.

In light of the dispute, the authorities by a letter dated 15/20th February 2007, had offered temporary dealership to respondent No.4, however, by another order dated 15th June 2007 permanent dealership

has been granted to respondent No.4. It was made clear to respondent No.4 that the Court proceedings are pending with respect to the dealership in question. Inspite of the same, respondent No.4 agreed and had no objection. Accordingly, respondent No.4 was allotted the dealership in question. The petitioner's right to continue with the temporary dealership is limited to the extent that unless the regular dealer is not appointed he can be allowed to continue. In light of the fact that respondent No.4 has already been given permanent dealership, the petitioner's right has automatically come to an end.

From perusal of the order dated 15th June 2007, it appears that there is no illegality on the part of the authorities. We have been assured by Shri P.Diwakar, Senior Advocate on the instructions of Shri J.K.Jha, Assistant Manager (Retail Sales), Bilaspur that the petitioner's claim would be cleared within a period of one month from the date he handsover the possession of the petrol pump to the authorities and all the dues payable to the petitioner would be paid, in accordance with law.

In the light of the above, the petition fails and it is accordingly dismissed.

Interim order granted earlier stands discharged.

Sd/-
Acting Chief Justice

Sd/-
Satish K. Agnihotri
Judge

Suguna